

Remarks

The foregoing amendments and remarks are responsive to the Office Action mailed on 10/16/03. Claims 1-19 are pending in this application. By the foregoing amendments, claims 1-10 have been provisionally cancelled in response to a restriction requirement by the Examiner. In addition, Applicants have rewritten claim 1 to include the step limitation "crushing the aerogel absorbate" and has amended claims 12-19 to correct for the dependent basis of each of such claims. Furthermore, new claims 20-25 have been added with support for such amendments being found inter alia, in the original claims and Applicants' specification. Support for the amendment of claim 1 can specifically be found in Applicants' specification, e.g., page 2, paragraph [0024] line 11; page 3, paragraph [0003], lines 16 -17; page 5, paragraph [0019], line 10; page 5, paragraph [0020] and; page 6, paragraph [0024], line 16; and original claim 1.

Accordingly, claims 11-25 are presented for examination and are believed to be in condition for allowance in light of the amendments and arguments infra.

Brief Discussion of the Invention

The present invention comprises producing an aerogel having a desired chemically specific adsorbing composition that can target specific gases or vapors of interest, crushing the thus produced aerogel, exposing the crushed aerogel to an environment for collecting a sample, and thereafter removing and analyzing the collected sample by means disclosed in the present application.

Discussion of the Office Action

In the Office Action of October 16, 2003, the Examiner restricted the claims to two groups of inventions and rejected the provisionally elected claims (11-19) under 35 U.S.C. §102(e) as being anticipated under Daitch et al. (US 6,447,991 B1).

The Restriction Requirement

During a telephone conversation with Examiner Siefke on 09/27/03, a provisional election with traverse was made to prosecute the elected invention of Group II. Applicants now affirm such provisional election with traverse so as to prosecute the elected invention of Group II (claims 11-19).

The Examiner has restricted the prosecution of the above-captioned case to one of the following inventions.

Group

- I. Claims 1-10, drawn to an aerogel absorbent, classified in class 435, subclass 5.
- II. Claims 11-19, drawn to a method of detecting an airborne contaminant, classified in class 436, subclass 501.

The Examiner supports the requirement for restriction stating that Groups I and II are distinct, each from the other because: "(1) the process as claimed can be used practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process (MPEP § 806.05(e)). In this case, the method can be practiced by a different apparatus. A different material than an aerogel material may be used to detect airborne contaminants."

However, Applicants respectfully submit that the method claims of Group II falls within the description of the aerogel absorbent of Group I generally disclosed in the above-captioned application. Although both groups are of different classes and subclasses as noted in the office action, the Applicants submit that there is a relationship between both such that a prior art search by the Examiner in the particular class and subclass relating to the Group II method of detecting an airborne contaminant would necessarily cover an aerogel absorbent as shown in the claims of Group I. Moreover, there is nothing in the statute or regulations, which require the Examiner to make such a

restriction requirement. To the contrary, MPEP §803 encourages the Examiner to examine all the claims.

“If the search and examination of an entire application can be made without serious burden, the examiner is encouraged to examine it on the merits, even though it includes claims to distinct or independent inventions.”

Accordingly, it is respectfully submitted that the instant application is just such a case to which the above-quoted portion of the manual is directed. The restriction requirement does not appear to serve any useful purpose since it does not make much sense to separate claims such as in the present application that are so closely related. Thus, there is no extra burden imposed on the Examiner in searching all the embodiments of Applicants' invention together. In addition, there is no point in maintaining the restriction requirement since it would only force the Applicants to file a divisional application which would result in another Examiner having to search the same art as has already been searched in the instant application. However, in the event that the Examiner rejects the arguments as put forth hereinbefore, Applicants authorize the Examiner to cancel the non-elected claims and prosecute the application as to the claims as shown in Group II.

Rejection of claims 11-19 under 35 U.S.C. §102(e)

As set forth above, claims 11-19 stand rejected under 35 U.S.C. §102(e) as being anticipated under Daitch et al. (US 6,447,991 B1).

Applicants' amended claim 1 is as follows:

A method for environmental and industrial sampling of airborne target material, comprising: providing a quantity of an aerogel absorbate, crushing the aerogel absorbate, exposing the crushed aerogel absorbate to an airborne

material for collecting a sample thereof, removing the collected sample, and analyzing the collected sample.

As shown by the underlined portion, claim 11 has been amended to include the step limitation crushing the aerogel absorbent. Such a limitation is not disclosed in Daitch et al. or suggested to warrant a 103(a) rejection. As directed by MPEP 706.02(a):

“it is well established that for a reference to support a rejection under 35 USC §102, that reference must teach every aspect of the claimed invention.”

Accordingly, in light of the amendment, the rejection of claim 11 under 35 U.S.C. §102(e) and 12-19, which either directly or indirectly depend on claim 11 and thus contain the amended limitations of claim 11 is believed overcome and is requested to be withdrawn.

Conclusion

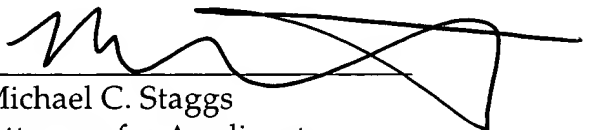
Having amended the claims as discussed above, the rejection of claims 11-19 is believed overcome and Applicants respectfully request allowance of claims 11-25. Thus, this application is deemed to be in condition for allowance based on claims 11-25.

In the event that the Examiner finds any remaining impediment to the prompt allowance of these claims that can be clarified with a telephone conference, he is respectfully requested to initiate the same with the undersigned at (925) 422-3682.

Respectfully submitted,

Dated: _____

1/16/04



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